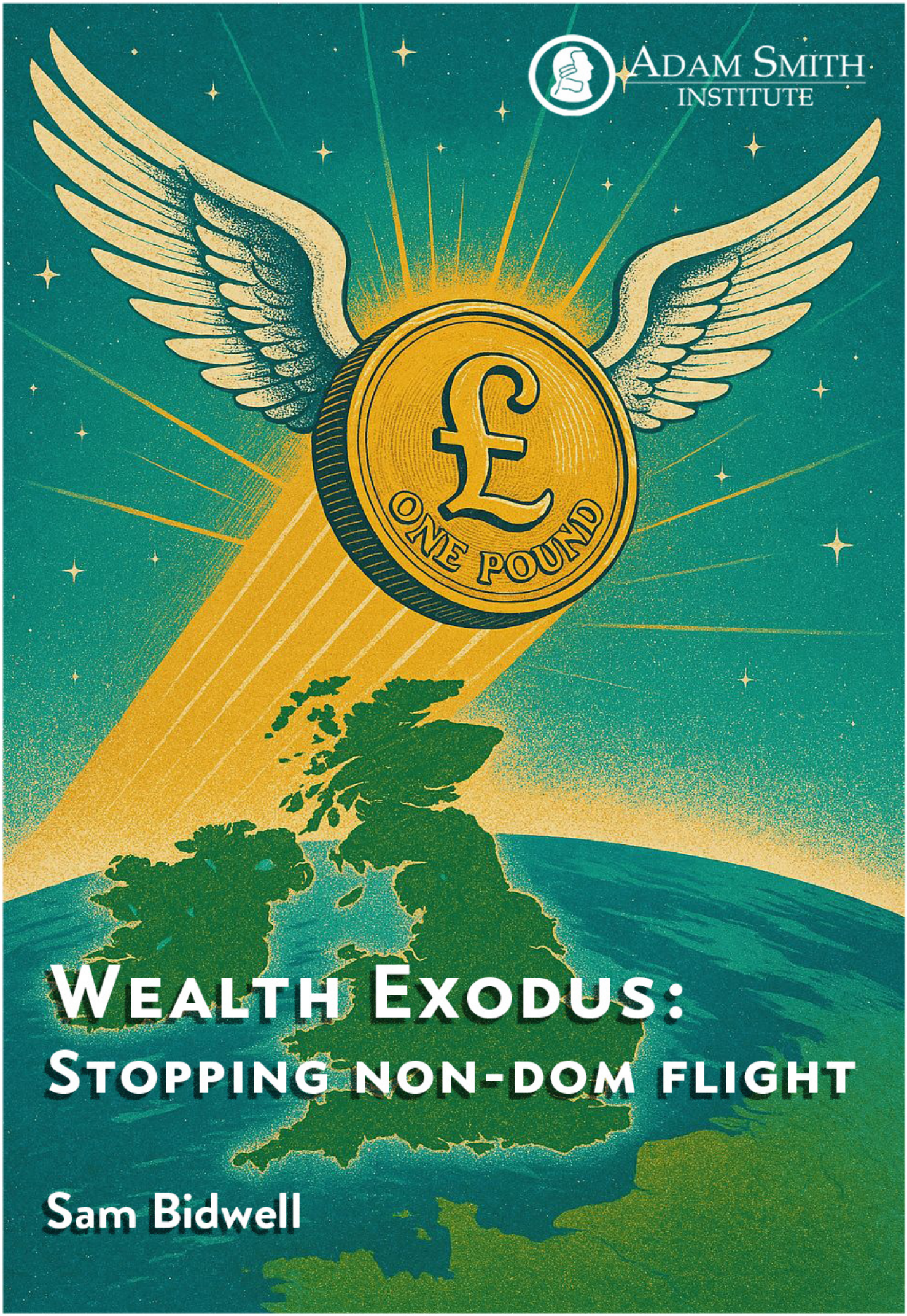
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WEALTH EXODUS:
STOPPING NON-DOM FLIGHT
Sam Bidwell

About the Author

Sam Bidwell is the Director of Research & Education at The Adam Smith Instutute. He holds a BA in law from the University of Cambrdge. He has worked as a Parliamentary Researcher, and as a Press and Research Consultant for the Commonwealth Enterprise and Investment Council. His writing on foreign affairs has been published internationally, including in Australia, Pakistan, and Bangladesh, and he was a contributor to the 2023 Commonwealth Security Review.

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Executive Summary

- As predicted by the Adam Smith Institute, the abolition of the UK's non-dom tax regime risks pushing wealth creators and High Net Worth Individuals (HNWIs) away from the UK, at a time when Britain desperately needs to retain wealth and talent.

- This threat is not a theoretical one - HNWIs are already leaving the UK. According to the Adam Smith Institute's Millionaire Tracker, the UK is set to lose a greater proportion of its millionaires than any other country in the world, over the course of this Parliament.

- However, after extensive consultation with legal experts, financial advisors, and accountants, **the situation appears to be even more concerning than first anticipated**.

- Due to the way in which the Government's planned changes to the non-dom regime will interface with other aspects of UK law, non-doms could face taxation on sums vastly exceeding their actual income from 6th April 2025.

- Two areas provide particular cause for concern. First, the current rules governing the transfer of assets abroad are excessively wide-ranging. In essence, if a UK resident owns a foreign company, its profits can be treated as personal income and taxed at 45%.

- Historically, non-doms have been shielded from this under Articles 726 and 730 of the Income Tax Act. However, the new Finance Bill seeks to dismantle these safeguards. Should this pass, non-doms will face not only full UK personal taxation, but also taxation on the profits of any foreign entities that they control, **leading in some cases to an effective tax rate of 67%.**

- Second, current plans for the Temporary Repatriation Facility are uncertain and unclear. There is significant concern amongst HNWI that funds repatriated under the TRF will be subject to additional taxation, including through HMRC's Transactions In Securities (TIS) and GAAR (General Anti-Abuse Rule) mechanisms.

- This uncertainty risks driving even more High Net Worth Individuals away from the UK, shrinking the pool of capital available to UK businesses and reducing the Treasury's overall tax take.

- The Government's new Finance Bill should preserve the Section 726 and Section 730 protections for structures and transactions established prior to 6th April 2025, and state unequivocally that funds repatriated under the TRF are exempt from additional taxation.

Introduction

It is no secret that the UK's finances are in dire straits.

After nearly two decades of lost growth, the UK faces an unenviable combination of high taxation and growing deficits. Having ruled out an increase to the overall rate of Income Tax, the Government faces significant challenges in addressing our fiscal shortfall. In her first Autumn Budget, the Chancellor announced plans to increase Capital Gains Tax from October 2024, increase the rate of Employer National Insurance Contributions (NICs), and from April 2025 abolish the non-dom tax regime - all measures designed to address this imbalance.

However, as both economic theory and empirical reality demonstrates, tax increases often do not yield increased revenues - and can bring with them harmful second-order consequences for the economy at large. Despite the predictions of some economists, plans to abolish the non-dom tax regime will almost certainly make this situation even more challenging for the country. The UK is already experiencing a Wealth Exit (now referred to as a WExit), with Britain set to lose a greater proportion of its millionaires than any other developed country during this Parliament.

In our previous research on this subject, the Adam Smith Institute has argued that the UK must now create an attractive offering for HNWIs, who contribute a disproportionate share of the UK's income, employment, and investment taxes.

Unfortunately, the situation appears to be even more concerning than initially anticipated. Having consulted with legal experts, financial advisers, and accountants, it is clear that the Government's Finance Bill, as currently drafted, would create a punitive and arbitrary set of rules for non-doms, which risks forcing even more HNWIs to leave the UK in the coming weeks and months.

In particular, two mechanisms set out in the Bill should provide significant cause for concern. First, new rules governing the Transfer of Assets Abroad could subject non-doms to an effective 67% tax rate on the profits of their overseas businesses. Second, existing plans for the Temporary Repatriation Facility are unclear and uncertain, potentially leaving non-doms exposed to additional taxation.

Taken together, these rules send a clear signal to HNWIs who plan to remain in the UK - 'we do not want you here'. At a time when the UK desperately needs to retain wealth and talent, these rules risk driving away some of the very individuals who drive growth and innovation across the economy.

This is a crisis unfolding in real time, and it demands urgent Parliamentary attention. If left unamended, the Government's Finance Bill will only exacerbate the UK's precarious financial situation. We must take swift, decisive action, to prevent this reality from coming to pass.

The Non-Dom Regime In Context

However, in order to understand the upcoming changes to the UK's tax domicile rules, it is first necessary to understand the UK's non-dom tax regime more broadly.

Far from being designed as a tax break for the super-wealthy, the non-dom regime has been a feature of the UK's tax system for more than 200 years. The UK was the first modern country to introduce an income tax, in 1799, as a way of raising emergency funds for the Napoleonic Wars. The moral principle which underpinned that income tax was that it was a charge to fund national security - therefore, it was decided that it ought to be a territorial tax, payable on UK income but not on foreign income. It was underpinned by a simple application of social contract theory - given that the UK Government was actively defending land and businesses within the UK from French aggression, citizens who benefitted from that land and those businesses ought to be responsible for contributing to the cost of the defence.

Until its abolition, the non-dom system continued to operate on the basis of this territorial principle. Individuals who live here in the UK, but who are not domiciled in the UK for tax purposes, paid tax only on their UK income and assets, or on foreign income and assets brought to the UK.

UK tax resident non-doms are, typically, individuals living in the UK, but who have not decided to live here permanently or indefinitely. They are, therefore, UK tax residents who are highly internationally mobile and do not necessarily feel 'tied down' to a particular country.

UK tax resident non-doms are treated differently to other UK tax residents in two ways. First, they can pay tax on the 'remittance basis', under which they pay UK Income Tax and Capital Gains Tax (CGT) only on income and capital gains generated or brought into the UK. Under the remittance basis model, foreign income and capital gains are not subject to UK tax, provided that they remain outside the UK.

The second favourable aspect of the non-doms rules are that only UK-situated assets owned by the non-dom are within the scope of UK Inheritance Tax (IHT). Their non-UK assets are not subject to IHT.

This regime was restricted in 2017, when the Government introduced tax changes for non-doms, which had first been introduced by George Osborne following the 2015 General Election. Non-doms who had been in the UK for at least 15 of the past 20 years were now 'deemed domiciled' in the UK for tax purposes, meaning that UK tax legislation was to treat them as UK domiciled for most tax purposes, even if they are still a non-dom. In essence, this introduced a 15 year 'cap' for UK tax resident non-doms to take advantage of the 'remittance basis', after which they are required to pay UK Income Tax and CGT on their worldwide income and capital gains.

Since its introduction, the non-dom tax regime was a key attraction for the UK, which has since attracted a disproportionate share of the world's wealthy and talented. This represented a globally competitive offering for High Net Worth Individuals (HNWIs), who were able to come to this country and contribute disproportionately, through investment, employment, and taxation.

As of early 2024, there were just 37,850 remittance basis non-doms in the UK, out of a population

of more than 68 million[1]. However, this cohort paid - and continues to pay - a disproportionate amount of tax. On average, as of 2024, non-doms paid around £120,000 in UK tax a year[2], with some paying millions, tens of millions, or even hundreds of millions[3].

However, despite these outsized contributions, the popular conception of 'non-doms' as tax-dodging oligarchs led many politicians to call for the scheme's abolition. According to then-Chancellor Jeremy Hunt, speaking at his Spring 2024 Budget, it had been the intention of Conservative Chancellor Nigel Lawson to end the non-dom regime in his 1988 Budget[4]. Research published in 2022, by Advani, Burgherr, and Summers at the University of Warwick, only intensified these calls[5].

In that same budget address, Hunt announced his intention to end the non-dom tax regime, albeit with generous transitional measures. Notably, the Conservative Government of that time did not announce an intention to bring 'excluded property' status trusts within the scope of Inheritance Tax, an omission which is not reflected in the current Government's Finance Bill.

However, the 2024 General Election interrupted these plans. Nevertheless, the incoming Labour Government signalled that it intended to continue towards the abolition of the non-dom regime, albeit with less generous transitional provisions.

In her first Autumn Budget, on 30th October 2024, the Chancellor of the Exchequer announced that the Government would take steps to scrap the non-dom regime, in line with promises made in the Labour Party's 2024 manifesto. According to law firm Burges Salmon, the Government's plans to abolish the non-dom regime can be summarised as follows[6]:

- Non-UK income and gains of an individual arriving in the UK will not be subject to UK tax for four years, rather than the typical 15 years under existing rules;
- 'Protected settlement' rules will be abolished. As such, non-doms who have created trusts will be taxed on income and capital gains in those trusts as they arise, rather than when they receive distributions, as under existing rules;
- IHT will apply to an individual's worldwide assets once they have been in the UK for at least 10 tax years, rather than the current 15. IHT will also continue to apply for up to 10 years after an individual ceases UK tax residence. In addition, 'excluded property' status trusts settled by long-term UK residents will lose IHT protection.
- There will be a 'Temporary Repatriation Facility' to enable current non-doms and those deemed domicile to bring untaxed income and gains to the UK, for the first three years of the new regime, at lower tax rates.
- The new regime is to begin on 6th April 2025.

As the Adam Smith Institute warned at the time in our Doms Away paper[7], the abolition of the

1 Reforming the taxation of non-doms: policy options and uncertainties, Stuart Adam and Helen Miller, Institute for Fiscal Studies, 4th March 2024

2 UK Domicile and Non-Doms - an explainer, Christopher Thorpe and George Crozier, Chartered Institute of Taxation, 1st March 2024

3 Inpatriates and carried interest, Damien Crossley, Macfarlanes LLP, 23rd August 2024

4 Non-dom tax breaks to go, Jeremy Hunt announces in budget, Jennifer McKiernan, BBC News, 6th March 2024

5 Reforming the non-dom regime: revenue estimates, Arun Advani, David Burgherr, and Andy Summers, University of Warwick

6 The UK's proposals for non-doms and their structures (as of 27th August 2024), Edward Hayes, Burges Salmon, 27th August 2024

7 Doms Away: alternatives to the abolition of the non-dom tax regime, Maxwell Marlow, Adam Smith Institute, 27th October 2024

non-dom regime, without a suitable replacement for HNWIs, risks provoking an exodus of wealth, talent, and investment from the UK. As our Farewell Non-Doms paper demonstrates, the abolition of the non-dom status could cost the UK economy £6.5 billion by 2035, with a direct loss of 23,000 jobs by 2030[8].

In response to this risk, we recommended the introduction of new rules, which would allow the UK to retain wealth and talent, while also continuing with the Government's plans to abolish the non-dom regime as currently constituted.

In particular, our Doms Away paper recommended an Italian-style flat fee system, for highly-mobile HNWIs who are not domiciled in the UK, but who are resident here. This scheme would exclude IHT on global assets and permit remitted income and capital gains to remain tax free. This would represent a competitive offering, which would go some way towards halting the exodus of HNWIs from the UK, while also raising money for the Treasury.

As an alternative to this flat-fee system, the Government could also consider a Swiss-style 'forfait' system, under which HNWIs are able to move to Switzerland if they agree not to work, and to be taxed on the basis of what they spend, rather than on their wealth. Those under the Swiss 'forfait' system cannot be Swiss citizens and are not eligible to vote; similarly, their children do not fall within the scope of 'forfait'. The forfait option takes a more contractual approach to tax: those who benefit from this model can live in Switzerland, if they agree to pay tax on their expenses.

Alongside either of these alternative systems, our Doms Away research also recommended that the UK should correct tax incentives, to remove the impetus for HNWIs to keep investments offshore, thus generating more investment in the UK. This should be coupled with a lowering of overall tax levels, and a simplification of the tax code, which may encourage some HNWIs to remain in the UK without the introduction of a bespoke scheme targeted at mobile, wealthy individuals. Jurisdictions such as the United Arab Emirates have managed to attract HNWIs without the introduction of a bespoke scheme, due to the fact that those resident in the UAE pay no inheritance tax, capital gains tax, or income tax.

However, at the present time, the Government has shown no indication that it intends to implement any of these alternative systems. In fact, in her first Autumn Budget, the Chancellor introduced plans to increase tax on capital gains and to uprate Employer National Insurance Contributions; these steps, alongside the abolition of the non-dom regime, are likely to compound the misery of any HNWIs interested in remaining in the UK.

As such, with the commencement date of 6th April 2025 fast approaching, the Treasury should not be surprised to see an exodus of High Net Worth Individuals. We are living in an increasingly competitive world, in which other countries now offer attract conditions for the relocation of these already highly-mobile HNWIs - according to research conducted by Knight Frank, Italy welcomed almost 1,200 non-doms in 2023 alone[9].

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8 Farewell Non-Doms: how non-dom reforms can damage Britain's finances, Mitchell Palmer and Maxwell Marlow, Adam Smith Institute, 17th October 2024

9 Italy doubles flat tax for wealthy new residents, Kate Everett-Allen, Knight Frank Intelligence Lab, 8th August 2024

The UK's Wealth Exodus

Indeed, the risk of a 'High Net Worth Exodus' is not a hypothetical one - this process is already taking place, driven by the abolition of the non-dom regime, alongside other upcoming changes. In a competitive world, wherein different jurisdictions offer favourable conditions for HNWIs, the abolition of the non-dom regime sends a clear signal to the world's wealth creators - the UK does not want you to be here.

HNWIs have already begun to respond to this signal. According to the Adam Smith Institute's own Millionaire Tracker, which utilises data from New World Wealth and UBS/Credit Suisse reports, the UK is set to lose the greatest proportion of millionaires of any developed country, over the course of this Parliament. The share of the population who are millionaires (those holding over 1 million US Dollars in net wealth across all asset classes) is set to fall by 20%; while 4.55% of UK residents were millionaires in 2024, this figure is set to fall to 3.62% by 2028.

Many of these millionaires are wealth creators, who set up businesses and employ people across the UK; their departure is a worrying leading indicator of the UK's economic health and growth prospects. This is particularly true for liquid millionaires, who tend to be entrepreneurs and business owners who have sold their enterprises for cash or shares, and who are often looking to continue investing into the economy.

Millionaires also pay a significantly greater share of taxation than other taxpayers, particularly as far as Income Tax, the Treasury's single-largest source of income, is concerned. According to HMRC data[10], the top 1% of earners pay 29.1% of all Income Tax, a remarkably disproportionate share of the UK's total tax take.

HNWIs are leaving the UK for a number of reasons, including high rates of day-to-day taxation, frozen inheritance tax thresholds, and the planned increase in Capital Gains Tax, alongside the abolition of the non-dom regime.

As the Adam Smith Institute has recommended previously, the Government should be aiming to create a tax environment which is friendly to entrepreneurs and wealth creators - freezing the cuts to Capital Gains Tax, cutting Corporation Tax, and offering a globally competitive regime for HNWIs.

The UK's 'High Net Worth Exodus' is already a significant cause for concern. However, following consultation with legal experts, financial advisors, and accountants - as well as a thorough examination of the specific proposal laid by the Government -, it appears that the situation may be even more concerning than initially anticipated.

Beyond simply subjecting non-doms to a 45% income tax rate, the real threat lies in the possibility that, after 6th April 2025, they could face taxation on sums vastly exceeding their actual income. This goes beyond mere high taxation - it is an arbitrary and punishing approach, reminiscent of the oppressive financial measures seen in authoritarian regimes around the world. The consequences of these planned changes are profound, and risk driving away even more HNWIs, at a time when the UK desperately needs to retain wealth and talent. For the Treasury, this represents an enormous

10 Shares of total income tax liability, HM Revenue and Customs, 30th April 2024

opportunity cost. Given the disproportionate share of tax paid by HNWIs, planned changes could actually result in the Treasury yielding less overall in tax than it currently does, alongside the negative second-order impacts on the economy as a whole.

In particular, two aspects of the Government's Finance Bill should provoke significant cause for concern. If left unamended, these provisions could have a significant detrimental impact on the UK economy from 6th April 2025.

First, new rules governing the Transfer of Assets Abroad risk subjecting non-doms to an effective 67% tax rate on their overseas business operations. Second, existing plans for the Temporary Repatriation Facility are unclear and uncertain, leaving many non-doms fearing arbitrary additional taxation.

Given the unfolding second-order impacts of the abolition of the non-dom regime, the Adam Smith Institute continues to believe that the UK should introduce a bespoke scheme to attract HNWIs, replacing the old non-dom system with an Italian-style flat fee or a Swiss-style forfait system. A scheme targeted specifically at HNWIs would help to ensure that the UK can continue to retrain and attract wealth and talent.

However, if the Government is set upon the abolition of the non-dom tax regime without presenting a replacement, it should clearly do so in accordance with basic principles of good governance, providing maximum certainty for HNWIs and reducing the risk of arbitrarily high taxation.

As currently constituted, the Government's plans risk undermining these basic principles, subjecting non-doms to arbitrary and excessive taxation. If allowed to continue unamended, these new rules will come into force on 6th April 2025, and will force many non-doms to relocate from the UK altogether, compounding our existing 'High Net Worth Exodus'.

Transfer of Assets Abroad

The current rules governing the transfer of assets overseas are excessively wide-ranging. In essence, if a UK resident owns a foreign company, its profits can be treated as personal income and taxed at 45%. Historically, non-doms have been shielded from this under Articles 726 and 730 of the Income Tax Act 2007.

Article 726 outlines the way in which foreign income of non-doms, derived from companies based overseas, is to be treated for the purposes of the rules governing the Transfer of Assets Abroad. Article 726 makes clear that income derived by non-doms from overseas business is to be "deemed income as relevant of the individual" - in other words, income derived from companies overseas is to be treated the same as other overseas income.

Section 730 provides a framework for income derived abroad from foreign work, and operates on the same principle as Section 726.

However, the Government's Finance Act seeks to dismantle these safeguards when it is activated in April 2025. Should this happen without amendments, non-doms will face not only full UK personal taxation, but also taxation on the profits of any foreign entities they control. In the worst-case scenario, this could leave non-doms liable for a 45% tax on foreign company profits, followed by an additional 39.5% tax on dividends. In the worst case scenario, this could result in an effective tax rate of 67% on the profits of overseas companies, for some non-doms.

This represents an unsustainable burden, and could result in an effective tax rate of 67% on the foreign enterprises of current non-doms. Given that non-doms are, by their nature, highly international and mobile individuals, they are likely to have overseas business interests which would be adversely affected by the repeal of Article 726 and Article 730. In effect, this would force non-doms to choose between remaining in the UK, or continuing their overseas enterprises. For many non-doms, it will prove simply unsustainable to remain in the UK when two-thirds of their income from overseas businesses is subject to UK tax. Left unamended, this risks encouraging even more HNWIs to relocate from the UK, sending yet more wealth and talent overseas.

The Institute of Chartered Accountants of England and Wales has reflected similar concerns[11]. In its analysis of the Finance Bill, ICAEW noted that protected foreign income sources "will be caught under both sets of legislation and be doubly taxed" under the Government's plans.

The Society of Trust and Estate Practitioners paints an even bleaker picture. According to STEP[12], the current draft of the Finance Bill could mean that "taxpayers who have never had anything to do with the UK can, on becoming UK-resident, be taxed by reference to gains that arose at a time when they never had any intention of becoming UK-resident and where the non-UK structure had no UK connections."

In other words, given the expansive and unclear rules proposed by the Government, newly domiciled residents of the UK could actually be subject to retroactive taxation on capital gains from non-

11 Finance Bill 2024-25, Clauses 21 and 37 and 46 and Schedules 8 to 13 - Replacement of Special Rules Related to Domicile (Representation 91/24), Institute of Chartered Accounts of England and Wales

12 STEP Response: HMRC's Open Call for Evidence on Personal Tax Offshore Anti-Avoidance Legislation, Society of Trusts and Estate Practitioners

UK assets. This is a clear violation of the most fundamental principles of taxation - it is absurd and unfair to apply such a steep tax rate (as much as 67%) to historic gains from foreign enterprises. This risks not just driving away HNWIs who are already based in the UK, but dissuading HNWIs with overseas business interests from moving to this country altogether.

Rather than fully repealing Articles 726 and 730, the Finance Bill should preserve these protections for structures and transactions established prior to 6th April 2025. In effect, this would protect the existing overseas assets of non-doms, while nevertheless making clear that any new businesses established after 6th April will be subject to new rules.

To be clear, this solution is not an ideal one in the long-term. It would still mean that, in a competitive world, the UK's offering for HNWIs would be significantly worse than it was before the abolition of the non-dom scheme. Even if it chooses to make such a change, the Government should still seriously consider the establishment of a bespoke scheme targeted at attracting HNWIs.

However, this is a clear, practical solution to the current problem, which would offer certainty for those HNWIs who wish to remain in the UK. It may, in other words, slow the bleed of those already leaving.

Temporary Repatriation Facility

In order to ensure a smooth transition from the existing regime, the Government's Finance Bill set out a proposal for a Temporary Repatriation Facility (TRF), which is designed to allow existing non-doms to repatriate their overseas income to the UK under favourable conditions.

The TRF is available for individuals who have previously claimed the remittance basis - in other words, individuals who were classified as non-doms under the previous rules. According to the Government's own explanatory notes[13], the TRF will enable non-doms to:

"Designate and remit at a reduced rate foreign income and gains that arose prior to the changes. This includes unattributed foreign income and gains held within trust structures"

The Temporary Repatriation Facility will be available for a limited period (3 tax years), with a 12% rate of taxation on repatriated income and gains for the first 2 years, increasing to 15% in the final year of operation.

On its face, the TRF provides a useful mechanism by which non-doms who wish to remain in the UK can repatriate their foreign income and capital gains on favourable terms. While not as attractive as the previous regime, this transitional period should, in theory, make life simpler for non-doms who wish to remain resident in the UK for tax purposes. It should, in theory, also promote significant investment in the UK, with offshore wealth brought to this country at a favourable tax rate for a period of three years.

However, existing HMRC policies create uncertainty for non-doms who might wish to make use of the TRF. Without ironclad legislative assurances, this uncertainty could discourage non-doms from using the TRF, undermining the Government's revenue and growth objectives.

In particular, recent case law indicates that HMRC is adopting an aggressive approach to tax enforcement. One such case is Osmond and ors v HMRC [2024]. This case concerned the application of the 'main purpose test' in HMRC's Transactions In Securities (TIS) anti-avoidance rules. The appellants in this case were serial entrepreneurs who had made successive investments over a period of many years, and who had subscribed for shares in a company, Xercise Ltd., under the Enterprise Investment Scheme (EIS). EIS is a series of tax reliefs, launched in 1994, and designed to encourage investments in small companies operating in the UK.

Xercise Ltd. was ultimately unsuccessful, and was sold in 2002 - but the company was retained by the appellants because the shares that they held in the company qualified for the benefits of EIS. The company was subsequently used to invest in another business, the Pearl Life Assurance and Pension Group. These transactions were specifically structured because the appellants wished to retain the CGT relief attached to their shares under EIR. Pearl proved to be much more successful than Xercise, and so the appellants held CGT-exempt shares which sat at a sizable gain.

At that time, the appellants became concerned that the benefits of EIS could be removed, thus subjecting the gains of their shares in Pearl to CGT. In order to crystallise their gain, the appellants entered into a buyback of their shares. However, according to HMRC, this transaction was in

13 Reforming the taxation of non-UK domiciled individuals, HM Revenue and Customs, 30th October 2024

violation of TIS rules, as it was intended to secure an "income tax advantage". While the First-Tier Tribunal agreed that it would have been "bonkers" for the transaction to have been structured in any other way, it held that HMRC was acting legitimately in identifying the transaction as a breach of TIS rules. According to the FTT, the TIS regime "deliberately casts its net very widely"[14]. As a result, the appellants were unable to derive the benefit of the CGT-exempt share regime outlined by the EIS.

It is easy to see why this case, and others like it, could provoke cause for concern for non-doms wishing to make use of the TRF. A previously agreed-upon benefit under the EIS was effectively rendered moot by TIS rules, which are, in the words of the FTT judgment, "deliberately [cast… widely]". It is not unreasonable to question whether or not a similar situation could arise with reference to income and capital gains repatriated under TRF, thus negating the benefit allegedly provided by the scheme.

This legal uncertainty is further compounded by other HMRC policies. HMRC's default stance is to treat the 45% income tax rate as standard, viewing lower rates (such as the rate of Capital Gains Tax) as concessions, subject to override by anti-avoidance mechanisms such as Transactions In Securities (TIS) and General Anti-Abuse Rules (GAAR). It is simply not clear how income and capital gains repatriated under the TRF will interact with existing anti-abuse rules. Given that HMRC's success rate in 2023 for all decided appeals across all tribunals stood at a staggering 91.8%[15], many non-doms will rightly be concerned that this lack of clarity could give HMRC space to levy additional taxation on funds repatriated under TRF. Should HMRC decide to do so, it is extremely unlikely that the tribunal system would rule in favour of non-doms, even if they had the time, will, and funds needed to pursue such legal action.

Worse, the TRF's classification as a "charge" rather than a tax means that the 12% payment rate will not offset income tax liabilities, potentially resulting in a combined 57% effective rate (12% TRF alongside the 45% standard rate).

As a result of this uncertainty, it should come as no surprise that many non-doms are considering relocation. Legal challenges against HMRC can be lengthy and expensive, disrupting lives and businesses. Any legal uncertainty around the treatment of income and capital gains repatriated under TRF presents a significant challenge for non-doms.

In order to prevent non-doms who might be tempted to remain in the UK from relocating, the Government must provide a cast-iron assurance that income and capital gains repatriated under TRF will be treated - now and in the future - according to basic principles of fairness and transparency. The Finance Bill must unequivocally state that funds repatriated under the TRF are exempt from additional taxation, and are unaffected by TOAA, TiS, and similar rules. This straightforward amendment is essential to ensure continued trust in the UK, and to enable HNWIs who wish to remain in the UK to do so.

Once again, this is still a suboptimal state of affairs. A clarified set of TRF rules would provide a measure of certainty to non-doms wishing to remain in the UK for tax purposes, but would still represent a regression from the current position. Nevertheless, given that the Government

14 With the best of (subjective) intentions: the FTT's decision in Osmond, Macfarlanes, 6th September 2024

15 2024 HMRC Trends - success can cost less, DWF Group, 24th April 2024

has shown no indication that it is willing to abandon its plans, or adopt an alternative scheme for HNWIs, this vital clarification could provide the impetus for some non-doms to make full use of the TRF, bringing overseas wealth into the UK.

This, in turn, would allow the Government's own fiscal plan to operate effectively according to its own assumptions. Given that the Government expects a significant proportion of the wealth repatriated under the TRF to be invested in the UK, it ought to be willing to provide clarity to would-be investors.

Conclusion

Planned changes to the non-dom tax regime, as laid out in the Government's Finance Bill, represent an unprecedented threat to the UK's long-held reputation for financial stability and friendliness to wealth creation. This is not a routine policy shift - it is an existential challenge for UK-based HNWIs who operate international businesses. If enacted unamended, the new Finance Bill will compel non-doms with legitimate enterprises overseas to flee the UK.

The fallout of these changes will not just harm non-doms, but the broader UK economy, which depends on their investment, innovation, and employment contributions. Swift, decisive action is necessary; this issue demands urgent Parliamentary attention.

The proposals included in this paper represent a fairly modest amendment to the Government's current plans. Put simply, we propose the following:

- Amend the Finance Bill, to preserve existing protections for income and capital gains generated by overseas enterprises established prior to 6th April 2025, as currently governed by Articles 726 and 730 of the Income Tax Act 2007.
- Amend the Finance Bill to provide legal certainty around funds repatriated under the Temporary Repatriation Facility, making clear that repatriated funds are exempt from additional taxation, and unaffected by HMRC's broader anti-avoidance rules.

These relatively modest changes would provide necessary certainty and stability for non-doms who are planning to remain in the UK. In turn, this will give the Government's plan a better chance of success overall, enabling more non-doms to repatriate wealth to the UK which can, in turn, be invested here.

That said, the Government should nevertheless consider the proposals laid out in the Adam Smith Institute's previous research on this subject, introducing a bespoke regime for HNWIs, designed to attract and retain wealth. Even with these changes, the UK's new tax regime represents a regression from our previous position, which will drive wealth and talent away from the UK at a time when our country needs it most.

Nevertheless, if it wishes to make the best of a bad situation, the Government should urgently implement these reforms.